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Supreme Court of the United States

October Term, 1969

No. 845

WOODROW YOKUM,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR REHEARING FOR WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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To the Honorable Chief Justice and the Associate Justices of The Supreme Court of the United States:

Petitioner, Woodrow Yokum, respectfully presents his petition for rehearing of the above styled cause for a Writ of Certiorari to review the judgment of the United States Circuit Court of Appeals for the Fourth Circuit entered on October 16, 1969, in case 12740.

OPINION BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit appears in the Appendix of the original petition for writ of certiorari at (2A).

No written opinion was rendered by the Trial Court.

JURISDICTION

The opinion of the United States Court of Appeals for the Fourth Circuit affirming the Trial Court in part was entered on October 16, 1969. This Court's jurisdiction is invoked under Rule 28, U.S.C., Section 1354(1) and by virtue of Rule 19(b) of the rules of this Honorable Court.

STATUTORY PROVISIONS INVOLVED

Title 18, Section 641, United States Code; Title 18, Section 2312, United States Code; Title 18, Section 2314, United States Code.

REASONS FOR REAPPLICATION

The Petitioner respectfully presents this petition for rehearing and says that he is relying on his original petition and appendix thereto for certiorari heretofore filed in this court. The questions presented therein and the statement of case as outlined in the original petition are made part of this petition for rehearing and application for writ of certiorari.

In addition, he further respectfully represents that as reasons for granting the writ, apparently the Courts, neither the District Court nor Circuit Court of Appeals, have taken cognizance of the fact that this case has been a political case from start to finish and has been front page headlines on all newspapers in West Virginia, radio and television from its original inception, including the decision of this court in denying the petition for writ of certiorari.

(1) Additional reasons for granting this writ, the motion to suppress the search warrant should have been sustained. When the motion relating to count 4 for the suppression of evidence was denied, the Government and the Trial Judge relied on the case of *U.S.* v. *Rabinowitz,* 70

S. Ct. 430; 339 U.S. 56; 94 L. Ed. 653, and *Harris* v. *U.S.*, 10 Circuit 151, Fed. 2d 837, in particular the *Rabinowitz* case was principally relied on by the Government in its brief and in its argument to the Circuit Court of Appeals, which case was specifically overruled by this court in the case of *Chimel* v. *State of Calif.*, 23 L. Ed. 2d 689; 89 Supreme Court ..... and the *Chimel* case was never presented either to the District Court or Circuit Court of Appeals, because it had not been decided as yet and the *Rabinowitz* case was treated as the controlling case, although the *Chimel* case was decided before the opinion was handed down in the instant case by the Fourth Circuit.

If this court will look at the evidence of Watkins, F.B.I. Agent, was of a general exploratory nature and was not made incident to the arrest, and he did not know when he made the affidavit whether this van was Government property or whether it even belonged to the Government, nor did he know what the van contained, so if this is not a shotgun approach to a search warrant which has been frowned upon repeatedly by the United States Supreme Court, then the writer of this petition does not understand the meaning of the shotgun approach.

The petitioner in this case has had many items of property seized by the Government that had nothing to do with what he is charged. His wife's farm has been confiscated and used by the Government, even at the present time, even though his counsel early in the proceedings made a motion for a return of the property and a release of the farm. Certainly this petitioner is entitled to some consideration and relief from such Gestapo tactics.

(2) The adverse publicity given to the Petitioner from the date of his arrest, to the trial, to the appeal before the Fourth Circuit Court of Appeals, and to the application

and petition to this court, has continued without any letup, and widespread through all types of news media, including newspapers, radio and television. The trial court did not admonish the jurors who were not locked up, and had access to local newspapers, radio and television, not to listen to accounts of this trial which was reported in detail though certainly grossly distorted in favor of the Government as to the proceedings and evidence.

The Court's ruling made out of the presence of the Jury were given wide publicity and it is a fair assumption that the jurors had knowledge of such rulings or at least of the news reports dealing with them.

EVIDENCE

If this Court will look to the evidence presented by the Government to prove conviction of elements of either the Dyer Act or as to criminal intention, it will become readily apparent to it that at no time in the case were any statutory rules or regulations introduced to show that the U.S. Bureau of Public Roads was the holder of title to the items Defendant is accused of stealing or transporting, or that they had any control whatsoever over such items other than as a forwarding body so far as Government forms are concerned.

In fact the evidence clearly shows that General Service Administration was the agency that released the property and that the particular agency that held title to the surplus property, for example, the U.S. Marine Corps, which held title and possession of the wrecker. None of the property set out in the indictment ever belonged to the Bureau of Public Roads. Certainly, if there were statutes or regulations as testified by Henke, then the Government had the duty and obligation to introduce these into record. It was not the responsibility of Petitioner to do so, nor was it his

duty to prove himself innocent. Without exception, when questioned or cross-examined, every one of the General Service Administration employees knew the capacity of the petitioner, knew his address and said that the rules and regulations were carried out by him in the release of each item of the particular property. They further say that they were the only agency that had this authority. For example, Hall, who served as the Property Disposal Officer at Cameron Station, Virginia, for many years, said he filled the forms out, delivered the property sometimes days in advance of signature by the General Service Administration and that this was standard procedure and in accordance with the rules and regulations and he had never heard anything about the Bureau of Public Roads having any jurisdiction over the surplus property. It seems strange that if the Bureau of Public Roads had such regulations and laws that a man who had served the length of time that Hall had knew nothing about such requirements for release of surplus property.

There is no question from the record that the petitioner had followed the procedure that had been outlined to him by the General Service Administration and which was followed by many other states besides West Virginia in property procurement. The contention that the Government always gets paid for this surplus property was not borne out by the evidence. Most of it was considered of no value and was so delivered to the respective state agency.

How the Defendant can be found guilty of Count 9 of the indictment which pertains to a 1951 Ward La France, which was legally released to CAP at Alexandria, Virginia, which release was in accordance with all rules and regulations, and which same 1951 Ward La France vehicle was sold according to the Government's own testimony to Irving Miller and paid for as salvage metal is beyond understand-

ing. Certainly, to say that the Petitioner should be convicted because of the slipshod methods of the U.S. Government and its various agencies is a far cry from justice. It is interesting to note that since this case developed that these rules and regulations were drastically revised. The Petitioner would ask the Court why the need for revision if they were as clearcut as the Government contended in this case.

One of the most damaging things to the Petitioner and a matter that was clearly reversible error, was the permission by the court to allow the Government on their "Exhibit 68" to introduce a xerox copy of an unsigned copy of a letter into evidence, particularly when it had never been supplied to counsel as required in accordance with Rule 16 of the Federal Rules of Criminal Procedure. The evidence shows that Elmer West testified to the effect when cross-examined that he did not know where the original was or whether he had ever received it. In fact West was so vague about this letter that it was difficult to determine whether there was any such letter ever in existence. His testimony was specifically contradicted by the Petitioner, particularly that part that had to do with procedure for securing surplus property. It seems a little strange that after seven years of securing surplus property, that the petitioner would write such a letter to a man who admitted he knew nothing about how it was being acquired; but what was far worse than this error was for the trial court to permit it to be introduced as to the credibility of the petitioner and then to let the District Attorney in his closing argument use it for the direct proof of the guilt of this Petitioner, and as to his knowledge as to proper procedure in acquiring property. John Marshall, the original Chief Justice of the Court, in the case of *Smith et als.* v. *Carrington,* 4 Cranch 63; 2 L. Ed. 550, outlined the manner in which a copy is admissible when the original is not available.

This Petitioner has been harassed and investigated by the Federal Bureau of Investigation, the Veterans Administration, the FAA, and numerous State Agencies of West Virginia, as well as political leaders in both the Democratic and Republican parties, and as it was stated in the very beginning of the petition, this case has been a political football in which the petitioner's rights, the property rights of his wife, and his personal liberty have been placed in jeopardy. All that the Petitioner respectfully requests of this court is that he be given a hearing on his petition for a writ in order that he might get a fair and impartial trial, as he is entitled to under the U.S. Constitution and the statutes and laws of the United States.

CONCLUSION

For the foregoing reasons it is respectfully urged that this petition for rehearing be granted and upon further consideration the judgment of the District Court for the Nothern Distict of West Virginia be reviewed and his conviction set aside, as well as the decision by the Judges of the United States Court of Appeals for the Fourth Circuit, dated October 16, 1969.

Respectfully submitted,

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Attorney for Petitioner

I, Robert G. Perry, Attorney for the above named Petitioner, do certify that the foregoing petition for rehearing is presented in good faith and not for delay.

Dated this 12th day of March, 1970.

ROBERT G. PERRY